

PT 99-19

Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**HARVEST
BIBLE
CHAPEL,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. 94-16-1209

**Real Estate Tax Exemption
for Part of 1994 Assessment Year**

P.I.N.: 02-24-301-006

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Gary Wigoda of Wigoda & Wigoda appeared on behalf of the Harvest Bible Chapel.

SYNOPSIS: This proceeding raises the limited issue of whether 35.4% of real estate identified by Cook County Parcel Index Number 02-24-301-006¹ should be exempt from 1994 real estate for 3% of the 1994 assessment year under 35 ILCS 200/15-40, wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

1. The property itself shall hereinafter be referred to as the "subject property"; the 35.4% of that property for which applicant is currently seeking exemption shall hereinafter be referred to as the "portion in dispute".

The controversy arises as follows:

On March 8, 1994, Harvest Bible Chapel (hereinafter the "applicant") filed a Real Estate Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Dept. Group Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that a partial exemption be granted. Dept. Group Ex. No. 1, Doc. B.

The Department examined the Board's recommendation and issued its determination in this matter on March 28, 1996. Said determination found as follows:

- A specifically identifiable portion of the subject property was exempt from 1994 real estate taxes, but only for 3% of the 1994 assessment year;
- A separate and distinct portion of the subject property was not so exempt;
- The exempt portion amounted to 64.6% of the building and a matching percentage of its underlying land; and,
- The remaining 35.4% of the building, and a corresponding percentage of its underlying land, was not exempt from 1994 real estate taxes, as it was not in exempt use.

Dept. Ex. No. 2

Applicant filed a timely request for hearing on April 16, 1996 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be modified to reflect that the entire subject property, including the portion in dispute and its underlying land, be exempt from 1994 real estate taxes, but only for 3% of the 1994 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. The Department's position in this matter is that the portion in dispute was not in exempt use during that 3% of the 1994 assessment year which began December 20, 1994 and ended December 31, 1994. Dept. Ex. No. 2.
3. The subject property is located at 800 Rohlwing Road, Rolling Meadows, IL 60008. Dept. Group Ex. No. 1, Doc. B.
4. The subject property is improved with a one story building that occupies 107,150 square feet. *Id.*
5. Applicant, an Illinois not-for-profit corporation whose primary corporate purpose is to conduct a Christian Evangelical Bible Chapel, acquired ownership of the subject property pursuant to the terms of a land trust agreement dated December 20, 1994. Applicant Ex. Nos. 1, 2; Tr. p. 25.
6. Applicant used 69,210 square feet or 64.6% of the subject property for prayer services, bible classes and other related purposes throughout the period that ran from December 20, 1994 through December 31, 1994. Dept. Group Ex. No. 1, Doc. B; Tr. p. 31.
7. The Department found this 64.6% of the subject property to be exempt from 1994 real estate taxes for 3% of the 1994 assessment year. Dept. Ex. No. 2.
8. Applicant used the remaining 37,940 square feet or 35.4% of the subject property as a boiler room. This area contained two large (six ton) air units that provided heat to the entire building. Tr. pp. 33, 35, 38.
9. The Department found that this particular 35.4% of the subject property was not in exempt use between December 20, 1994 and December 31, 1994. Dept. Ex. No. 2.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the portion in dispute (and therefore, the entire subject property), from 1994 real estate, but only for 3% of the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the portion in dispute does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-40 should be modified. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 **ILCS** 200/1-3 *et seq.*). The provisions of the Code which govern disposition of the instant proceeding are found in section 15-40, wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation. 35 **ILCS** 200/15-40.

Applicant bears the burden of proving that its property falls within the appropriate statutory exemption by clear and convincing evidence. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App. 3d 153 (1st Dist. 1985)). Furthermore, the following rules of statutory construction and interpretation apply in all property tax exemption cases: (1) a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968), Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987)); and, (2) the word "exclusively" when used in section 200/15-40 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993)).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment eliminated that requirement in cases that do not involve parsonages. The determinative test of exemption then became use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dep't of Revenue, 242 Ill. App. 3d 716 (2nd Dist. 1993).

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137, (1911), (hereinafter "McCullough"), the Illinois Supreme Court defined the term "religious purpose" as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

Here, the Department's determination (Dept. Ex. No. 2) establishes that this applicant practices a "religion" as that word is defined by Illinois case law.² This determination further establishes that applicant used 64.6% of the subject property "exclusively" for "religious purposes" from December 20, 1994 until December 31, 1994. Applicant has not challenged either of these findings herein. Accordingly, I shall leave them undisturbed and devote any remaining analysis to the portion in dispute

In Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App. 3d 225 (2nd Dist. 1991), the court held that exemption will be sustained where applicant proves that the use of its property is "reasonably necessary" to effectuate other exempt activity. Applicant's pastor, James MacDonald, testified that the portion in dispute contained two large (six ton) air units that provided heat to the entire building. Tr. pp. 33, 35, 38. Based on this testimony, I conclude that this portion was "reasonably necessary" to effectuate the religious uses that were

2 . That definition, originally articulated in McCullough, is as follows:

... while religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of G-D as members of societies and associations."

McCullough, *supra* at 136.

taking place in the remaining portions of the building. Consequently, that part of the Department's determination pertaining to the portion in dispute should be reversed.

This conclusion has the effect of exempting the entire subject property and all of its underlying land from 1994 real estate taxes, but only for 3% of the 1994 assessment year. Therefore, the Department's determination should be modified to reflect this exemption.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the entirety of real estate identified by Cook County Parcel Index Number 02-24-301-006 and all of its underlying land be exempt from 1994 real estate taxes, but only for 3% of the 1994 assessment year.

Date

Alan I. Marcus,
Administrative Law Judge